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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR(F)-858-2025 (O&M)
Date of Decision:01.07.2025

Vijay Tanwar

.....Petitioner

Versus

Sandhya and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Surender Saini, Advocate and
Mr. Nikhil Saini, Advocate for the petitioner.

JASGURPREET SINGH PURI J.(Oral)

1. The present revision petition has been filed challenging the judgment passed by the learned Principal Judge, Family Court, Sonipat dated 07.04.2025, whereby the learned Principal Judge, Family Court, Sonipat allowed the petition under Section 125 Cr.P.C. by granting maintenance totaling Rs. 30,000/- per month, out of which Rs. 20,000/- per month has been awarded to respondent No.1-wife and Rs. 10,000/- per month to respondent No.2-(minor daughter, who is in the care and custody of respondent No.1-wife.

2. It was argued by learned counsel for the petitioner that the petitioner, who is the husband, is serving as an Inspector in CIA Staff in the Haryana Police and this fact is not in dispute. He further submitted that it is also not in dispute that the petitioner was married to respondent No.1 and out of the wedlock, a female child was born who is also in the care and custody of respondent No.1-wife. He submitted that so far as the petitioner is concerned,



although he had filed a reply before the learned Judge, Family Court and had also filed his affidavit pertaining to declaration of assets and liabilities in accordance with the judgment of Hon'ble Supreme Court in ***Rajnesh v. Neha, 2021 (2) SCC 324*** and thereafter, he did not appear and he was proceeded *ex parte*. He further submitted that the petitioner was not granted an opportunity to rebut his case and to raise his defence at the time of trial and therefore, the impugned order may be set aside.

3. Learned counsel further submitted that respondent No.1 the legally wedded wife of the petitioner had withdrawn from the society of the petitioner without any reasonable excuse. He also submitted that the petitioner had filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, which was later on withdrawn by the petitioner. He further submitted that the petitioner had also filed a separate petition under Section 13 of the Hindu Marriage Act against respondent No.1, which is pending before the learned Principal Judge, Family Court, Sonipat. He submitted that it is not in dispute that respondent No.1 had pursued her LL.B. course and she has now completed her LL.B. Degree but there had been an erroneous finding recorded by the learned Judge, Family Court in the impugned order by observing that there is no evidence on record to show that the respondent-wife is an educated lady and therefore, the finding is erroneous in nature. He submitted that as per the affidavits which have been filed by both the parties for declaration of assets and liabilities, the petitioner being an Inspector in Haryana Police was drawing a salary of Rs.80,528/- per month at the time of filing of the affidavit in the year 2024, whereas as per the affidavit which has been filed by respondent No.1-wife, she was not having any source of income. He submitted that



considering the fact that respondent No.1-wife has withdrawn from the society of the husband herself, the impugned order is liable to be set aside.

4. I have heard the learned counsel for the petitioner.

5. It was the first argument of the learned counsel for the petitioner that since the petitioner was proceeded *ex parte* and was not given an adequate opportunity to defend his case, the impugned order is liable to be set aside. A perusal of the impugned order would show that the petitioner-husband in response to the petition filed under Section 125 of Cr.P.C. had filed a detailed reply before the learned Principal Judge, Family Court, Sonipat, which has also been annexed with the present petition as Annexure P-2. Thereafter, the petitioner also filed his affidavit pertaining to the declaration of assets and liabilities, which has also been annexed with the present petition as Annexure P-3. When the case was fixed for final argument, the petitioner did not appear and was proceeded *ex parte* on 05.04.2025 and therefore, at the terminal stage, he absented himself from the Court and was proceeded *ex parte* and this fact is clear from para No.11 of the impugned order. Therefore, this Court is of the considered view that the argument raised by the learned counsel for the petitioner that the petitioner was not given an adequate opportunity is not sustainable because it was at the terminal stage of the trial that the petitioner did not present himself and was proceeded *ex parte* at the time when the matter was fixed for final arguments. Rather the petitioner was given full and adequate opportunity to defend his case and in response thereto, he had already filed his reply and his affidavit pertaining to the declaration of assets and liabilities etc.

6. Another argument which was raised by the learned counsel for the petitioner is that respondent No.1-wife had withdrawn from the society of the



petitioner without any reasonable excuse and therefore, she was not entitled for the grant of maintenance under Section 125 of Cr.P.C. A perusal of the impugned order would show that there is nothing on record to show that the petitioner has proved by way of any evidence that respondent No.1-wife had withdrawn from the society of the petitioner without any reasonable excuse. However, at the same time, the petitioner had rather filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which according to the learned counsel for the petitioner, he himself had withdrawn and he filed a separate petition under Section 13 of the Hindu Marriage Act for dissolution of the marriage. The onus to prove whether respondent No.1-wife had withdrawn from the society of the petitioner vests with the petitioner to which he did not discharge his onus and therefore, at this stage, when he has filed the present revision petition, he cannot be permitted to raise such an argument that because of the aforesaid reason, respondent No.1-wife is not entitled for the grant of maintenance.

7. By way of the impugned order, the learned Principal Judge, Family Court has granted a total maintenance of Rs.30,000/-to the respondents, out of which Rs.20,000/- per month is to be paid to respondent No.1-wife and Rs.10,000/- per month is to be paid to respondent No.2, who is the minor daughter aged about 2-3 years and undisputedly, she is in the care and custody of her mother, who is living separately from the petitioner. So far as the income of both the parties is concerned, it has been proved on record that the petitioner who is working as an Inspector in CIA Staff in the Haryana Police was earning Rs.80528/- per month as per his own affidavit (Annexure P-3). On the other hand, so far as respondent No.1-wife is concerned, she also filed her affidavit



pertaining to her assets and liabilities vide Annexure P-4 and a perusal of the same would show that she has no source of income at all, whereas in the column of expenditures, it has been shown by her that her gross monthly expenses are Rs.35,000/-. Apart from the above, the petitioner has not been able to prove anything on record before the learned Principal Judge, Family Court that respondent No.1-wife is having any source of income, although she is stated to have now completed her LLB.Degree. This Court is of the considered view that the mere fact that now respondent No.1 has done her LLB. Degree would not mean that she will not be entitled for the grant of maintenance from the petitioner, unless it can be shown that she is earning a adequate amount and in view of the same, the quantum can be adjusted to some extent but as per the facts of the present case, she is having no source of income at all and therefore, such an argument raised by learned counsel for the petitioner cannot be sustained.

8. Respondent No.1-wife is having the care and custody of a female child aged 2-3 years. The quantum of maintenance so far as respondent No.1-wife is concerned, is only Rs.20,000/- per month and for respondent No.2-minor child is only Rs.10,000/- per month. Considering the cost of living, inflationary tendencies, medical expenses, and many other factors, by no stretch of imagination can it be said that the quantum of Rs. 30,000/- per month is on the higher side. The quantum of maintenance which has been fixed by learned Principal Judge, Family Court can also be tested on the basis of the income of the petitioner to which admittedly as per his own affidavit pertaining to assets and liabilities, his income was Rs.80,525/- per month and by now it must have



gone upto Rs.1,00,000/- per month and therefore, the total maintenance for the mother and her child is about $1/3^{\text{rd}}$ of the income of the petitioner .

9. The present is a Revision Petition filed by the petitioner-husband regarding which the scope is very limited. On the basis of facts and circumstances of the present case, this Court is of the considered view that there is no illegality or perversity in the impugned judgment passed by the learned Principal Judge, Family Court, Sonipat dated 07.04.2025.

10. Consequently, finding no merit in the present petition, the same is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

01.07.2025

rakesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No